IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1422

N. H. NEWMAN,
JERRY LEE PUGH, WORLEY JAMES, *et al.*,
Petitioners,

v.

STATE OF ALABAMA,
JUDSON C. LOCKE, JR., GEORGE C. WALLACE, *et al.*,
Respondents.

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ROBERT D. SEGALL
P.O. Box 347
Montgomery, Alabama 36101

GEORGE PEACH TAYLOR
P.O. Box 1435
University, Alabama 35485

ALVIN J. BRONSTEIN
MATTHEW L. MYERS
RALPH I. KNOWLES, JR.
National Prison Project of the
American Civil Liberties Union
Foundation
1346 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Petitioners

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No.

N. H. NEWMAN,
JERRY LEE PUGH, WORLEY JAMES, *et al.*,
Petitioners,

v.

STATE OF ALABAMA,
JUDSON C. LOCKE, JR., GEORGE C. WALLACE, *et al.*,
Respondents.

CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioners in the above styled consolidated cases, who together represent all persons confined by the Alabama Board of Corrections or who may be so confined in the future, hereby petition for a writ of certiorari to review that part of the judgment of the United States Court of Appeals for the Fifth Circuit which modified the District Court's equitable relief, but only if the Court grants the petition filed by the Respondents herein in No. 77-1107.[1]

---

[1] The Petitioners have filed simultaneously herewith a brief in opposition to the petition for a writ of certiorari in *State of Alabama, et al. v. N.H. Newman, et al.*, No. OT 77-1107.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 559 F.2d 283 (5th Cir. 1977). The Honorable J.P. Coleman, Circuit Judge, entered an order granting the motion of the Respondents (appellants below) for a stay of the mandate of the Court of Appeals pending the filing of a petition for a writ of certiorari on November 25, 1977 (filed November 28, 1977). The opinion of the District Court is reported at 406 F. Supp. 318 (M.D. Ala., 1976).[2]

JURISDICTION

The Judgment of the Court of Appeals was entered on September 16, 1977. An order denying petitions for rehearing on behalf of all the parties was entered on November 7, 1977. On January 26, 1978, Mr. Justice Powell extended the time for filing this cross-petition to and including April 6, 1978.[3] The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

---

[2] The Petitioners incorporate by reference Appendices A, B, C, D, and E of the petition for a writ of certiorari filed by the Respondents in this case in Case No. 77-1107. Those appendices are, respectively: the opinion of the Court of Appeals; the judgment of the Court of Appeals; the denial of the petitions for rehearing of both parties; the order of a stay of the mandate of the Court of Appeals; and the opinion and order of the District Court.

All appendix references are to the appendix in the petition for a writ of certiorari in No. 77-1107 and are designated A_____.

[3] That order was entered in Miscellaneous No. A-624.

QUESTIONS PRESENTED

1. Whether the Court of Appeals rendered a decision in conflict with decisions of this Court and of other courts of appeals when it affirmed all of the District Court's extensive findings of fact but narrowed the relief ordered by the District Court without a finding that the remedy ordered by the District Court exceeded the nature and scope of the proven and admitted massive constitutional violations, solely because the Court of Appeals, without any factual support, believed that less intrusive measures could have been taken?

2. Whether the Court of Appeals rendered a decision in conflict with decisions of this Court and of other courts of appeals when it rejected the finding of the District Court that under the facts of this case the Eighth and Fourteenth Amendments were violated by the imposition in the Alabama prison system of conditions of confinement which directly and, without any legitimate penological purpose, affirmatively and unnecessarily caused prisoners to suffer mental and physical deterioration?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment Eight:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Constitution of the United States, Amendment Fourteen:

> . . . nor shall any State deprive any person of life, liberty or property, without due process of law, . . .

United States Code, Title 42:

§1983. Civil Action for deprivation of rights.

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisidction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

This case proceeded in the trial court on the basis of two separate complaints by prisoners in the Alabama prison system who sought declaratory and injunctive relief pursuant to 42 U.S.C. §1983 for deprivation of their rights under the Eighth and Fourteenth Amendments.[4]

Each case proceeded as a class action – *James* on behalf of all persons confined by the Alabama Board of Corrections or who might be so confined in the future, and *Pugh* on behalf of those prisoners who were or might be confined at one of Alabama's prisons, the G.K. Fountain Correctional Center.

---

[4] The trial court's post-trial findings of fact and conclusions of law included findings and conclusions that the court's three-year-old order in *Newman v. Alabama*, 349 F. Supp. 278 (M.D. Ala., 1972), aff'd, 503 F.2d 1320 (5th Cir. 1974), *cert. den.*, 421 U.S. 948 (1975), relating to medical care in the Alabama prison system had (continued)

The trial of the consolidated cases lasted seven days and included the extensive and virtually uncontradicted testimony of eight nationally known experts in corrections, correctional psychology and public health who testified for the plaintiffs and *amici*.[5] In addition, the court had before it over 450 photographs, numerous depositions and exhibits as well as over 1,000 stipulated facts. The state officials rested their case without presenting any substantial contradictory evidence and "[t]he trial concluded with the admission by defendants' lead counsel, in open court, that the evidence conclusively established aggravated and existing violations of plaintiffs' Eighth Amendment rights." (A. 36).

The trial court subsequently entered an order incorporating extensive findings of fact and conclusions of law. The findings and conclusions related to virtually every aspect of the Alabama system and found that confinement under the totality of conditions in the Alabama Prison system violated the prisoners' rights under the Eighth and Fourteenth Amendments. The District Court found, *inter alia*, that "[t]he four principal institutions are horrendously overcrowded," (A. 37); "that inmates have to sleep on mattresses spread on floors in hallways and next to urinals," (A. 39); that Alabama's prisons "are overrun with roaches, flies, mosquitoes, and other vermin," (A. 40); that "[m]any toilets will

---

[4] (continued) not been complied with (A. 43, 44, 61, 62). Because the same issues were among the issues raised in *James* and *Pugh*, the District Court consolidated the three cases for the purposes of implementing its original order in *Newman*. (A. 69, 70).

[5] The United States Attorney for the Middle District of Alabama participated in the trial as one of the *amici*, and the United States, by the Department of Justice, participated as *amicus* in the Court of Appeals.

not flush and are overflowing," (A. 40); that "some inmates drink from used tin cans," (A. 41); that a public health officer found the four major prisons "wholly unfit for human habitation under public health standards," (A. 42); that "there is no working classification system in the Alabama penal system," (A. 42); that "robbery, rape, extortion, theft and assault are everyday occurrences among the general inmate population," (A. 45); that "even if the inmate population were reduced to design capacity, the system would still be woefully understaffed," (A. 46); that "the rampant violence and jungle atmosphere existing throughout Alabama's penal institutions are no surprise," (A. 48); that "the indescribable conditions in the isolation cells required immediate action to protect inmates from any further torture by confinement in those cells," (A. 55); that the almost total lack of work, educational or other constructive activities contributed to the prevalent atmosphere of apathy, tension, frustration and despair, (A. 49-53); and that "these conditions create an environment that not only makes it impossible for inmates to rehabilitate themselves but also makes dehabilitation inevitable," (A. 49).

The District Court then issued an injunction to remedy these massive constitutional violations. In light of the clear long-term tolerance of those violations by state officials and the total non-compliance with the prior *Newman, supra*, order on medical care, the court included as a part of its remedy the creation of a Human Rights Committee to assist it in monitoring future compliance. (A. 69, 70).

The state officials did not request a stay of the trial court's order, but did appeal that order to the Court of Appeals. The Court of Appeals expressly approved the District Court's detailed findings concerning the "indefen-

sible conditions" in Alabama prisons (A. 7), and upheld the vast majority of the remedial measures required to remedy the constitutional violations. However, the appellate court "declined" to uphold the District Court's finding that under the egregious facts presented in this case, the deliberate indifference by state officials to the imposition of conditions of confinement which directly and without any penological purpose affirmatively and unnecessarily caused prisoners to suffer mental and physical deterioration was a violation of the Eighth and/or Fourteenth Amendments, (A. 18, 19). The Court of Appeals modified "a few features" of the order which were found by the District Court as a matter of fact to be necessary to remedy the massive constitutional violations but which the Court of Appeals decided could be replaced by "less intrusive, but equally effective measures," (A. 10). Among the modifications ordered by the Court of Appeals were the appointment of individual monitors to report on compliance at each prison rather than the maintenance of the Human Rights Committee (A. 16); the allowance of prison officials to substitute their own visiting regulations for those found necessary by the trial court (A. 20, 21); and the deletion, in spite of the evidence at the time of the trial, of the requirement that the prison officials provide prisoners with the opportunity to participate in basic educational and vocational programs, (A. 23).

Petitions by all parties for rehearing were denied. However, the Respondents' motion for a stay of the issuance of the mandate pending the filing of a petition for certiorari was granted, leaving the District Court's original order intact. The Petitioners were granted until April 6, 1978 to file a cross-petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION FOR CERTIORARI

I. THE COURT OF APPEALS RENDERED A DECISION IN CONFLICT WITH DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEALS WHEN IT NARROWED THE RELIEF FOUND NECESSARY BY THE DISTRICT COURT TO CORRECT THE MASSIVE CONSTITUTIONAL VIOLATIONS EXISTING IN THE ALABAMA PRISON SYSTEM.

In its opinion the Court of Appeals approved and adopted the detailed and exhaustive findings of the District Court which led that court to the conclusion that by any contemporary societal standards, the conditions of confinement in the Alabama prison system were shocking to the conscience of reasonably civilized people and bore no relationship to any legitimate penological goals or valid governmental interests. (A. 7)[6] Nor could those findings be challenged in light of the overwhelming and virtually uncontested testimony at trial and the open-court concession of the Alabama prison officials that the plaintiffs were entitled to relief because of aggravated and wholesale Eighth Amendment violations.

This Court has made abundantly clear that once a constitutional violation is found the scope of the equitable remedy is determined by the nature and extent of the constitutional violation; that the remedy can be aimed at eliminating a condition that violates the Constitution or flows from such a violation; and that the court's equitable powers to remedy violations is broad and flexible and must be

---

[6] The barbaric and inhumane conditions in the Alabama prison system as well as Judge Johnson's ordered remedies have already been noted by this Court in *Dothard v. Rawlinson*, 433 U.S. 321, 334, 336, n. 23 (1977).

molded by the necessities of the situation, *Milliken v. Bradley*, 433 U.S. 267 (1977); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *State of Alabama v. United States*, 304 F.2d 583 (5th Cir. 1962), *aff'd*, 371 U.S. 37 (1962). The same rule applies to constitutional violations found in a prison setting. *See, e.g., Procunier v. Martinez*, 416 U.S. 396 (1974); *Washington v. Lee*, 263 F. Supp. 327 (M.D. Ala., 1966); *aff'd per curiam*, 390 U.S. 333 (1968); *Battle v. Anderson*, 564 F.2d 388 (10th Cir. 1977); *Williams v. Edwards*, 547 F.2d 1206 (5th Cir. 1977); *Inmates of Suffolk County Jail v. Eisenstadt*, 494 F.2d 1196 (1st Cir. 1974); *Nelson v. Heyne*, 491 F.2d 352 (7th Cir. 1974). The trial judge is granted this broad and flexible discretion to determine the contours of the ordered remedy because he or she is closest to the scene of the violations, and is best able to determine factually what measures are necessary to remedy those violations. *Milliken, supra*, at 280, n. 15. Such factual findings for remedy are in the nature of findings of fact under Rule 52, F.R.C.P., and should not be overruled unless "clearly erroneous." One of the reasons for that rule has been recognized by Judge Godbold referring to the District Court's order in this case: "[a] federal district court [is] closer to the situation than we are." *Jackson v. Alabama*, 530 F.2d 1231, 1244, n. 9. See, also, *State of Alabama v. United States, supra*, at 585.

The appellate court in this case at first appeared to accept the general law as established by this Court by initially stating that the only real issue before it was an appraisal of whether the District Court "exceeded its judicial power and abused its discretion" in fashioning the needed remedy to cure the massive constitutional violations. (A. 7-9). However, the Court of Appeals, without determining whether the remedy prescribed by the District Court

exceeded the nature and scope of the violations (its appropriate function), and without furnishing any record support or reasons, substituted its own judgment as to "a few features" for that of the trial judge, by stating its ". . . opinion that less intrusive, but equally effective, measures should have been taken by the District Court" (A. 10). Compare, *e.g., Milliken v. Bradley I,* 418 U.S. 717 (1974) and *Milliken v. Bradley II,* 433 U.S. 267 (1977).

Among the "less intrusive" modifications were the deletion of the District Court's findings concerning what should be required in the areas of visitation and educational programs. The uncontradicted and voluminous evidence before the district judge was that under the horrible totality of conditions existing in the Alabama prison system, it was necessary to provide meaningful visitation and educational opportunities for prisoners because their absence contributed to the constitutional violations which concededly existed. Every expert witness who addressed these issues testified that these programs were essential in Alabama to prevent unconstitutional deterioration and that no penological or societal interest would be served by denying such programs. *Pell v. Procunier,* 417 U.S. 817 at 822-23 (1974). The state officials have never challenged those findings.

Thus, the Court of Appeals, without furnishing any factual support from the record, has ignored the law established by this Court and recognized by other courts of appeals concerning the power of district courts to remedy constitutional violations, and substituted its "opinion" as to what would be a "less intrusive, but equally effective" remedy. In doing so, it has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision under Supreme Court Rule 19.

II. THE COURT OF APPEALS RENDERED A DECISION IN CONFLICT WITH DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEALS WHEN IT REJECTED THE FINDING OF THE DISTRICT COURT THAT UNDER THE FACTS OF THIS CASE THE EIGHTH AND FOURTEENTH AMENDMENTS WERE VIOLATED BY THE IMPOSITION IN THE ALABAMA PRISON SYSTEM OF CONDITIONS OF CONFINEMENT WHICH DIRECTLY, AND WITHOUT ANY LEGITIMATE PENOLOGICAL PURPOSE, AFFIRMATIVELY AND UNNECESSARILY CAUSED PRISONERS TO SUFFER MENTAL AND PHYSICAL DETERIORATION.

The District Court found as a fact that the barbaric and inhumane conditions of confinement in Alabama's prisons inflicted mental and physical deterioration and suffering on the persons incarcerated therein without any penological justification and thereby violated the Eighth and Fourteenth Amendments. (A. 46, 49, 50, 54, 61, 63). This finding was completely supported by and was based upon the uncontradicted opinions of each of the experts who testified as well as the totality of the evidence presented. Indeed, neither the state officials nor the Court of Appeals challenged the *fact* that conditions in Alabama's prisons caused unnecessary suffering and the impairment of prisoners' physical and mental health and skills. Further, the state officials did not attempt to justify, nor did either of the courts below find, any penological justification for this state imposed deterioration. Nevertheless, the appellate court rejected the District Court's finding that the state-imposed unnecessary mental and physical deterioration and debilitation violated the Eighth and Fourteenth Amendments by simply stating: "We decline to enter this uncharted bog." (A. 19). The Petitioners respectfully suggest that if there is a bog at all, it has been carefully and clearly charted by the prior decisions of this Court and

that those decisions require a reversal of the appellate court on this issue. *Estelle v. Gamble*, 429 U.S. 97 (1976); *Gregg v. Georgia*, 428 U.S. 153 (1976) (plurality opinion). See, also, *Battle v. Anderson, supra; Holt v. Sarver*, 442 F.2d 304 (8th Cir. 1971); *Inmates of D.C. Jail v. Jackson*, 416 F. Supp. 119 (D.D.C. 1976); *Palmigiano v. Garrahy*, C.A. No. 74-172, 443 F. Supp. 956 (D.R.I. 8/10/77; *Laaman v. Helgemoe*, 437 F. Supp. 269 (D.N.H. 1977).

It is now axiomatic that the Eighth Amendment cruel and unusual punishment clause prohibits not only barbaric and tortuous physical punishment[7] but also "embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency" evidencing the "evolving standards of decency that mark the progress of a maturing society." *Estelle, supra*, at 102; *Gregg, supra*, at 173; *Trop v. Dulles*, 356 U.S. 86, 101 (1958); *Weems v. U.S.*, 217 U.S. 349, 378 (1910). In applying Eighth Amendment standards to conditions of confinement in prisons, the relationship of the conditions imposed must be viewed in light of the goals of deterrence, rehabilitation and institutional security. *Pell v. Procunier, supra*, at 822-23. See, also, *Law v. State*, 238 Ala. 428, 431, 191 So. 803 (1939); *Yates v. State*, 31 Ala. App. 404, 405, 17 So. 2d 594 (1944); Ala. Code, Tit 45, Sec. 188(1)(4).[8] In applying these well-established criteria

---

[7] The district court's finding of both tortuous and barbaric punishment by confinement in the Alabama prison has not been challenged. (A. 48, 55, 60, 67)

[8] Surely, the State of Alabama does not claim to have an official state policy which would sanction the unnecessary state-imposed deterioration of those it confines in its penal institutions. Cf, *Gregg v. Georgia, supra.* (recognizing a legislative policy which approves capital punishment).

to the "jungle atmosphere" where there is "rampant violence" and "shockingly inhumane conditions" in facilities "totally unfit for human habitation" with a prevalent attitude of "apathy, tension, frustration and despair" which together prevent rehabilitation and cause mental and physical deterioration it is clear that there is an Eighth Amendment violation. The needless and wanton dehabilitation and deterioration of Pugh can surely no more be justified in a civilized society than the denationalization of Trop or the passive tolerance of the suffering of Gamble. *Trop, supra; Estelle, supra.*

In addition, this Court has recently directly held that state officials may not, consistent with the Eighth Amendment, be "deliberately indifferent" to prisoner's medical needs or engage in the "gratuitous infliction of suffering." *Estelle, supra*, at 102, 103; *Gregg, supra*, at 173. The Alabama prison officials were clearly derelict on both scores. Surely, the deliberate indifference of Alabama prison officials to conditions of incarceration which cause the unnecessary impairment of prisoners physical and mental health and skills is just as unjustifiable as ignoring a prisoner's back injury. Similarly, subjecting prisoners to such conditions of confinement without an iota of evidence of penological justification is nothing more than the gratuitous infliction of physical and mental suffering. No one could and no one has argued that causing a person to lose what positive attitudes and constructive skills and work habits they possessed prior to going to prison meets any penological or rehabilitation purpose.

Finally, the Court of Appeals erred in not recognizing the constitutional violations under the facts of this case because the state imposed impairment of the physical and mental health of prisoners bears no relation to the purpose

of incarceration, and constitutes punishment grossly disproportionate to the severity of any crime, all of which violate the petitioner's Eighth Amendment rights and Fourteenth Amendment Due Process rights. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Pell, supra* at 823; *Estelle, supra* at 103, n. 7; *Gregg, supra* at 173; *Weems, supra* at 367.

Having declined to consider these constitutional violations, the Court of Appeals also did not consider the duty of the district court to prescribe a remedy which would correct those constitutional deficiencies but merely modified the district court's order. For example, the District Court made specific findings of fact based upon substantial and uncontradicted evidence that both idleness and lack of meaningful visitation contributed to the conditions causing deterioration. It also found that basic and vocational education programs and meaningful visitation were necessary, under the facts which existed at the time of trial in this particular case, to prevent and counter the deterioration caused by the conditions shown. Again, these findings were not challenged by the appellate court as it excised those portions of the remedy prescribed. Thus, the appellate court erred in its interpretation of the requirements of the Eighth and Fourteenth Amendments, established by this Court and by other Courts of Appeals.

CONCLUSION

For the foregoing reasons, this Court, in the event it grants the petition for a writ of certiorari in No. 77-1107, should also grant this petition and reverse the Court of Appeals judgment insofar as it modified the order of the District Court.

Respectfully submitted,

ALVIN J. BRONSTEIN
MATTHEW L. MYERS
RALPH I. KNOWLES, JR.
National Prison Project of
the American Civil Liberties
Union Foundation
1346 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 331-0500

ROBERT D. SEGALL
P.O. Box 347
Montgomery, Alabama 36101

GEORGE PEACH TAYLOR
P.O. Box 1435
University, Alabama 35485

Attorneys for Petitioners

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

NO. 77-1422

N. H. NEWMAN,
JERRY LEE PUGH, WORLEY JAMES, et al.,

Petitioners,

v.

STATE OF ALABAMA
JUDSON C. LOCKE, JR., GEORGE C. WALLACE, et al.,

Respondents.

BRIEF FOR RESPONDENTS IN RESPONSE TO THE CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

THOMAS S. LAWSON, JR.
P. O. Box 2069
Montgomery, Ala. 36103

W. SCEARS BARNES, JR.
P. O. Box 801
Alexander City, Ala. 35010

WILLIAM J. BAXLEY
Attorney General of Alabama
250 Administration Bldg.
Montgomery, Ala. 36130

LARRY R. NEWMAN
Assistant Attorney General
of Alabama
669 South Lawrence St.
Montgomery, Ala. 36130

Attorneys for Respondents

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1422

N. H. NEWMAN,
JERRY LEE PUGH, WORLEY JAMES, *et al.*,
Petitioners,

v.

STATE OF ALABAMA,
JUDSON C. LOCKE, JR., GEORGE C. WALLACE, *et al.*,
Respondents.

BRIEF FOR RESPONDENTS IN RESPONSE TO THE CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

Petitioners have filed a conditional cross-petition for a writ of certiorari to review that part of the judgment of the United States Court of Appeals for the Fifth Circuit which modified the District Court's equitable relief, but only if the Court grants the petition filed by the Respondents herein in State of Alabama, et al. v. Jerry Lee Pugh, et al. No. 77-1107.

Respondents do not agree that the Court of Appeals erred in the manner complained of by Petitioners. However, in the event review is granted of the first question presented in No. 77-1107, Respondents--The State of Alabama; the Alabama Board of Corrections; Judson Locke, Jr., individually and in his official capacity as Commissioner of the Alabama Board of Corrections; Bill Long, individually; J. O. Davis, individually and as warden of G.K. Fountain Correctional Center; Reverend John E. Vickers, Dr. Thomas F. Staton, and Dr. Marion L. Carroll, Jr., individually and as members of the Alabama Board of Corrections; J. Louis Wilkinson and W. F. Hamner, as members of the Alabama Board of Corrections; the Attorney General of Alabama; and the warden, hospital administrator, business manager, and all hospital staff of Kilby Corrections Facility (formerly Medical and Diagnostic Center, Mt. Meigs, Alabama) --would not oppose the simultaneous granting of Petitioner's cross-petition seeking a review of the modifications which the Fifth Circuit did make in the remedial

order issued by the District Court. Those standards and requirements which were disapproved by the Court of Appeals further illustrate the District Court's departure from its judicial role in fashioning its relief and in undertaking the administration of the State's prison system, and both the petition and cross-petition seek to have this Court consider whether any limitations exist upon a federal court's power to order prison reforms when conditions of confinement in State prisons are found to violate the Eighth Amendment. Otherwise, these Respondents oppose the cross-petition.

Petitioners do not seek review of the action of the Court of Appeals in ordering the District Court to dissolve its injunction against Respondent George C. Wallace and those members of the Board of Corrections and other prison officials no longer in office. Therefore, those Respondents--George C. Wallace, individually and in his official capacity as Governor of Alabama, M. B. Harding, H. Couch, Yetta G. Sanford, Jr., Dr. Max V.

McLaughlin, and Thomas E. Bradford, Sr., individually--oppose the granting of the cross-petition as to them in view of the fact that they are not petitioners in No. 77-1107 and their inclusion as parties to the cross-petition is neither necessary nor appropriate under the circumstances.

Respectfully submitted,

Thomas S. Lawson, Jr.
W. Scears Barnes, Jr.
William J. Baxley
Larry R. Newman